

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BRIAN N. DRAKE,)
Petitioner,) The Honorable Robert E. Keeton
v.)
Case No. 04-11426 REK
UBS FINANCIAL SERVICES INC.,)
Respondent.)

STIPULATION AND REQUEST FOR ORDER

Petitioner Brian N. Drake (“Drake”) and Respondent UBS Financial Services Inc. (“UBS”), for their Stipulation and Request for Order, reached after conferring pursuant to L.R. 7.1, hereby request an extension of time as a result of continued difficulties in obtaining the transcript of the arbitration hearings, through no fault of the parties. In support of this Stipulation and Request, the parties state as follows:

1. The parties having filed a stipulation, and the court ordering an extension of the deadline to July 30, 2004; and
2. The parties having filed a stipulation, and the court ordering an extension of the deadline to August 20, 2004; and
3. The parties having experienced continued problems in obtaining one of the tapes, containing testimony and argument essential to Petitioner’s Motion to Vacate, due to it being “destroyed” during the copying process at the National Association of Securities Dealers (“NASD”)(Exhibit A); and
4. The parties having consented to the NASD producing the tape for possible recovery, based upon the court reporter’s belief that the contents can be recovered;

5. The parties agree as follows: (1) Due to difficulties in obtaining transcription of the hearing transcript, through no fault of either party, Drake may have an extension to file an Amended Complaint and Application (Motion) to Vacate on or before September 24, 2004, while reserving all rights as to the sufficiency of the Complaint and Application (Motion) to Vacate; and (2) UBS is excused from answering or otherwise pleading in response to the Complaint and Application (Motion) to Vacate, while reserving all rights, defenses, affirmative defenses and counter-claims thereto.

WHEREFORE, Petitioner Brian N. Drake and Respondent UBS Financial Services Inc. respectfully request that the Court enter an Order accepting this Stipulation and ordering that (1) Drake may file an Amended Complaint and Application (Motion) to Vacate on or before September 24, 2004, while reserving all rights as to the sufficiency of the Complaint and Application (Motion) to Vacate; and (2) UBS is excused from answering or otherwise pleading in response to the Complaint and Application (Motion) to Vacate, while reserving all rights, defenses, affirmative defenses and counter-claims thereto.

Respectfully submitted:

Kevin G. Mahoney
One of the attorneys for Respondent
UBS Financial Services Inc. *by J.S.L.*

Kevin G. Mahoney
Menard, Murphy & Walsh LLP
60 State Street
34th Floor
Boston, MA 02109
Tel.: (617) 832-2500
Fax: (617) 832-2550

Shanna L. Pitts
One of the attorneys for Petitioner
Brian N. Drake

William A. Jacobson (#544791)
Shanna L. Pitts (*admitted pro hac vice*)
Law Offices of William A. Jacobson
850 Turks Head Building
Providence, RI 02903
Tel.: (401) 490-7500
Fax: (401) 490-5680

OF COUNSEL:

William M. Ejzak
Schuyler, Roche & Zwirner, P.C.
Suite 3800, One Prudential Plaza
130 East Randolph Street
Chicago, Illinois 60601
Tel: (312) 565-2400
Fax: (312) 565-8300